

## **REMARKS**

By this amendment, Applicants have added new independent claim 19 directed to a method for determining the composition of at least one layer of a fluid.

In response to the election of species requirement in the outstanding Office Action, Applicants elect the species of determining the composition of a homogenous fluid shown in Figure 2 and embodied in claims 1-12. It is submitted new claim 19 also reads on the elected species. However, the election of species requirement is traversed for the following reasons.

Where two or more species are claimed, a requirement for restriction to a single species is proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not for the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in the scope. Manual of Patent Examining Procedure (MPEP) 806.04(f).

Restriction to a single species is not proper here since the species are not mutually exclusive. That is, claims 1-12 directed to the first species identified by the Examiner recite limitations disclosed also for the second species identified by the Examiner and embodied in claims 13-18. More specifically, the limitations set forth in steps (a), (b) and (c) of claim 1 and in steps (f), (g) and (h) of claim 13 are common to both species. Therefore, the species are not mutually exclusive and restriction to a single species should not be required.

Expressed in another way, restriction should not be required since the claims overlap in scope. This is evidenced by new claim 19 which recites limitations common to both species.

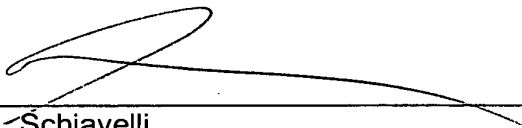
In any event, it is submitted claim 19 is a generic claim and, if allowable, Applicants should be entitled to consideration of all of the claims in the application.

Accordingly, withdrawal of the election of species requirement and examination of all of the claims in the application are requested.

Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 612.43696X00), and please credit any excess fees to such deposit account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

A handwritten signature in black ink, appearing to read 'Alan E. Schiavelli', is written over a horizontal line.

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